IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN

S.B. Civil Second Appeal No.608/2006

Smt. Sarla Agarwala W/o late Shri S.P. Agarwala
...defendant-appellant
Versus
Netra Prakash Sethi S/o Sunder Lal Sethi
...plaintiff-respondent

Date of Order ::: 14.12.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri S.K. Sharma, Advocate, for
Shri Kamlakar Sharma, Counsel for defendant-appellant
Shri S.M. Mehta, Sr. Advocate, with
Shri Shailesh Prakash Sharma, Counsel for plaintiff-respondent

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By the Court:-

Heard learned counsel for both the parties.

The plaintiff-respondent filed a suit for eviction in respect of the rented premises, which was decreed by the lower court on the ground of personal bona-fide necessity. However, on an appeal on behalf of the defendant-appellant, the first appellate court partly allowed the appeal and modified the judgment and decree passed by the lower court and granted the decree of eviction in respect of two rooms in favour of the plaintiff-respondent. Being aggrieved with the part of decree also, the defendant has preferred this second appeal.

The learned counsel for the plaintiff-

respondent submits that although the plaintiff-respondent has not preferred any cross-appeal or cross-objection but he is entitled to raise his grievance in respect of finding of the first appellate court whereby the decree of partial eviction in favour of the plaintiff has been refused. The contention of the learned counsel for the plaintiff-respondent is that the first appellate court has committed an illegality in not passing the decree of eviction for the entire premises itself.

During the course of arguments on 8.12.2006, the learned counsel for the defendant-appellant, Shri Kamlakar Sharma, contended that the appellant is ready to vacate the entire premises itself as per the decree dated 14th of December, 2005 passed by the Civil Judge (Senior Division), Kota, in Civil Suit No.36/2002, provided the plaintiff-respondent agrees to grant time to vacate the rented premises up-to 30th of June, 2008. The learned counsel for respondent agreed that the defendant-appellant may vacate the entire premises itself on or before 30th of June, 2008. Thereafter appellant was given time to file an undertaking in writing and as per the direction of this Court dated 8th of December, 2006, the learned counsel for the defendant-appellant has filed an undertaking in writing duly supported by an affidavit of defendant-appellant Smt. Sarla Agarwala, to vacate the entire premises as per the decree dated 14th of December, 2005, in Civil Regular Suit No.36/2002 on or before 30th of June, 2008. The undertaking is taken on the record.

In view of the agreement in between both the

parties as well as the undertaking furnished by the defendant-appellant, the appeal is disposed of in the following manner:-

> 1. The defendant-appellant shall vacate the entire rented premises as per the decree dated 14th of December, 2005 passed by the Civil Judge (Senior Division) Kota, in Civil Suit No.36/2002, on or before 30th of June, 2008;
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> 2. The defendant-appellant shall deposit the entire arrears of rent, if any, till 30th of November, 2006, within a period of one month from today and she will further continue to pay the monthly rent by 15th day of each succeeding month or in advance to the plaintiff-respondent.
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> 3. It is made clear that in case the defendant-appellant fails to deposit/pay the arrears of rent within one month, as directed above, or fails to pay the monthly rent for consecutive three months, then it will be open for the plaintiff-respondent to execute the decree of eviction passed in his favour even before the aforesaid time.

The judgment and decree dated 4th of October, 2006 passed by the Additional District Judge No.2, Kota in Civil Regular Appeal No.6/2006 is accordingly modified and the judgment and decree dated 14th of December, 2005 passed by the Civil Judge (Senior Division) Kota in Civil Suit No.36/2002 is restored.

With the aforesaid terms, conditions and the directions the second appeal is disposed of with no order as to costs.

(Narendra Kumar Jain) J.

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